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To: Microsoft ATR
Date: 1/18/02 3:36pm
Subject: Microsoft Settlement

I offer here my comments, in accordance with Tunney Act provisions, related to the proposed settlement between the government and Microsoft.

The government has chosen to prosecute this case in very narrow terms that do not do justice to the weight and strength of Microsoft's monopoly. The public interest is not served by such self-imposed limits, and the narrow measures provided in the proposed settlement. This case should be used as a vehicle to address the Microsoft monopoly in toto.

Much of the proposed remedy consists of offering choice to the OEMs and consumers. While ending excessively restrictive licensing terms is a worthy step, this does nothing in practical terms to diminish the monopoly power wielded by Microsoft in the marketplace. In order to truly remedy monopoly abuse, there must be genuine punitive measures imposed upon Microsoft.

Another deficiency of the proposed settlement is the absence of a bar to future anticompetitive behavior. In the past, Microsoft has often dealt with perceived competitive threats not only by raising restrictive middleware barriers, but also by buying competing technologies, products, or companies outright. To prevent continued abusive behavior and the expansion of Microsoft's monopoly power in the marketplace, Microsoft should be barred from acquiring ownership positions in competing companies, and from purchasing software products and technologies from other companies.

Others, such as consumer advocate Ralph Nader, have made note of the impropriety of Microsoft's sizable cash position. The liquid assets of Microsoft exceed the total market capitalization and assets of many of Microsoft's competitors in the software marketplace. This capacity to buy any company or product which can be seen as a threat or strategic asset hangs as a threat over the industry. As a punitive measure, the government should seek to take no less than half of Microsoft's cash and short-term investments as a fine for anticompetitive actions.

In order to minimize government intrusion in the software industry and the burdens imposed by constant oversight, a structural remedy is likely the most expedient option, and possibly the one which offers the most long-term assurance of market protection.

It makes sense to split Microsoft into separate companies, although perhaps not along the lines proposed by the district court initially. Logically, there is one unit responsible for operating systems, another for software applications, one for internet products and services, and

other products. It would seem to make sense to make separate companies for each of those product areas, barring each from most contact with the others for a period of some years.

Without such a structural remedy, there is a need for substantial procedural remedies and fines, more so than provided by the proposed settlement. There are many activities which companies may engage in that take greater significance when executed by a monopolist. The government should recognize this fact, and place more severe behavioral restrictions on Microsoft.

Disclosure statement: I own no stock in any software or computer-related company, nor have I ever been in the employ of such a company.

Sincerely,

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